IN THE HIGH COURT OF DELHI

Crl.M.C. No.558/2004

M/s.Texmaco Ltd. ..... Petitioner
! through: Mr.J.V.Rana, Adv.

VERSUS

$ The State & Ors. ..... Respondents
^ through: None.

% DATE OF DECISION: 07.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Petitioner had employed late Mohan Lal as its employee alleging that during course of employment petitioner had given possession of a residential quarter to Mohan Lal who had not returned possession thereof on retirement, a complaint under Section 630 of the Companies Act 1956 was filed before the learned Metropolitan Magistrate, Delhi.

2. During pendency of the complaint, Mohan Lal

died. Petitioner's application to bring on record his legal heirs was dismissed by the learned ACMM vide order dated 23.8.2003.

3. Petitioner's Crl.Rev.No.23/2004 was dismissed by the learned Additional Sessions Judge vide order dated 2.11.2003.

4. Petitioner has challenged both orders with a prayer that application filed by the petitioner to bring on record legal heirs of late Mohan Lal be allowed.

5. Reason given by the Courts below is that with the death of Mohan Lal a fresh cause of action has accrued to the petitioner to institute fresh proceedings against the legal heirs of the deceased employee.

6. I am afraid, learned ACMM and the learned ASJ have not correctly understood the legal provision enshrined in the Companies Act namely Section 630 thereof.

7. Wrongfully obtaining possession of the property of a company or wrongfully withholding it or knowingly applying it to a purpose other than that authorized by the company makes the employee liable for punishment under Section 630 of the Companies Act. The object is to not only regulate the affairs of a company but protect the property of

the company.

8. It is for said reason that Section 630 of the Companies Act has been interpreted to mean that the offence contemplated thereunder is a continuing offence.

9. In the report published as 1995 RLR 232 (SC) *Smt.Abhilasha V.K.Jain vs. Cox & Kings*, in para 17 the Supreme Court observed:-

> "17. S.630 of the Act provides speedy relief to the company where its property is wrongfully obtained or wrongfully withheld by an "employee or an officer" or a "past employee or an officer" or "legal heirs and representatives" deriving their colour and content from such an "employee or officer" in so far as the occupation and possession of the property belonging to the company is concerned. The failure to deliver property back to the employer on the termination, resignation, superannuation or death of an employee, would render the "holding" of that property wrongful and actionable u/S.630 of the Act. *To hold that the "legal heirs" would not be covered by S.630 of the Act would be unrealistic and illogical.* It would defeat the "beneficent" provision and ignore, the factual realities that the legal heirs of the family members who are continuing in possession of the allotted property, had obtained the right of occupancy with the concerned employee in the property of the employer only by virtue of their relationship with the employee/officer and had not obtained or acquired the right to possession of the property in any other capacity, status or right."

10. Whether legal heirs of the deceased employee have to be made accountable by and under a separate

petition or can be impleaded as legal heirs in the existing petition, let me put a poser.

11. If the employee, during the pendency of the prosecution dies, can it reasonably be said that the prosecution under Section 630 abates? The answer has to be in the negative. The reason is that if the property of the company was wrongly held by the employee, its possession by its heirs and legal representatives would be called wrongful. Inasmuch as the employee was liable to return the same, said heirs or legal representatives who come into possession thereof would be equally liable. As long as the liability remains, cause would survive in favour of the company.

12. The petition accordingly is allowed. Impugned order dated 28.11.2003 dismissing Crl.Rev. No.23/2004 is set aside. The revision petition is allowed. As a consequence thereof the order dated 23.8.2003 passed by the learned ACMM, Delhi is set aside. Application filed by the petitioner for impleadment of the legal heirs of deceased Mohal Lal is allowed.

13. Proceedings shall be revived by the learned ACMM and after serving the legal heirs of deceased Mohan

Lal further proceedings would be conducted in accordance with law.

14. Copy of this order be supplied dasti by the Registry to learned counsel for the petitioner on payment of usual charges.

August 07, 2007 PRADEEP NANDRAJOG, J.
dk